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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	Docket No.: 19-CV-05503 (VB)
VICTORIA MALONE,	:
	:
Plaintiff,	:
	:
-against-	:
	:
THE TOWN OF CLARKSTOWN, TOWN OF	:
CLARKSTOWN HIGHWAY DEPARTMENT,	:
WAYNE BALLARD, in his personal and official	:
capacity as Clarkstown Highway Superintendent,	:
FRANK DIZENZO, in his personal and official	:
capacity as Clarkstown Highway Superintendent,	:
ANDREW LAWRENCE, in his personal and official	:
capacity, DAVID SALVO, in his personal and official	:
capacity, ROBERT KLEIN, in his personal and official	:
capacity, TUCKER CONNINGTON, in his personal	:
and official capacity, and BRIAN LILLO, in his	:
personal and official capacity,	:
	:
Defendants.	:
-----X	

**DECLARATION OF JOHN M.
FLANNERY IN SUPPORT OF
TOWN'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

JOHN M. FLANNERY, an attorney duly admitted to practice law before the courts of the state of New York and United States District Court for the Southern District of New York, hereby declares pursuant to 28 U.S.C. § 1745, and under penalty of perjury, as follows:

1. I am a partner at the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, attorneys for defendant the Town of Clarkstown (the "Town") in this action. I submit this declaration in support of the Town's motion for partial summary judgment.

2. Attached hereto as **Exhibit A** is a copy of Plaintiff's Amended Complaint in this action, filed on October 22, 2019 (DE #75).

3. Attached hereto as **Exhibit B** is a transcript of Plaintiff's July 23, 2018 interview with the Town Attorney's Office, bearing Bates numbers TOWN000670-833.

4. Attached hereto as **Exhibit C** is a copy of the transcript of the first day of Plaintiff's 50-h hearing.

5. Attached hereto as **Exhibit D** is a copy of the transcript of the second day of Plaintiff's 50-h hearing.

6. Attached hereto as **Exhibit E** is a copy of the transcript of the first day of Plaintiff's deposition, dated September 24, 2020 in this matter.

7. Attached hereto as **Exhibit F** is a copy of the transcript of the second day of Plaintiff's deposition, dated September 25, 2020.

8. Attached hereto as **Exhibit G** is a copy of the transcript of the deposition of Charles "Tucker" Connington, dated October 5, 2020.

9. Attached hereto as **Exhibit H** is the Affidavit of Charles "Tucker" Connington, dated November 19, 2021.

10. Attached hereto as **Exhibit I** is a copy of the transcript of the deposition of Frank DiZenzo, dated October 8, 2020.

11. Attached hereto as **Exhibit J** is a copy of the transcript of the 30(b)(6) deposition of Sergeant Christopher Brigando, dated November 13, 2020.

12. Attached hereto as **Exhibit K** is a copy of the transcript of the 30(b)(6) deposition of Town Attorney Leslie Kahn, dated November 23, 2020.

13. Attached hereto as **Exhibit L** is a copy of the transcript of the 30(b)(6) deposition of the Town's Labor Counsel, Vincent Toomey, dated November 13, 2020.

14. Attached hereto as **Exhibit M** is the Affidavit of Vincent Toomey, dated November 23, 2021. The Affidavit attaches as Exhibit 1, an email chain attaching the February 28, 2019 Letter that Mr. Toomey received from Plaintiff's former counsel, Catherine Foti, bearing Bates numbers TOWN005191-5193.

15. Attached hereto as **Exhibit N** are excerpts of the transcript of the deposition of Dominic Santulli, dated October 26, 2020.

16. Attached hereto as **Exhibit O** are excerpts of the transcript of the deposition of Dennis Friscoe, dated November 17, 2020.

17. Attached hereto as **Exhibit P** are excerpts of the transcript of the deposition of David Salvo, dated October 1, 2020.

18. Attached hereto as **Exhibit Q** is the November 17, 2021 affidavit of mechanic Donald Smith.

19. Attached hereto as **Exhibit R** are excerpts from the transcript of the deposition of Dennis Malone, dated November 19, 2020.

20. Attached hereto as **Exhibit S** are text messages between Victoria Malone and Dave Salvo, bearing Bates stamps MALONE_001994-1996. *See* Ex. YY (Plaintiff's Responses to Town's Requests to Admit) at ¶9.

21. Attached hereto as **Exhibit T** is the November 22, 2021 affidavit of Robert Paul, which attaches **Exhibit 1** (vestibule videos). The videos were produced to all parties in this matter on February 20, 2020. The December 13, 2018 video (12132018-HWY-TC-AM.ave) was marked as Exhibit V at Plaintiff's Deposition. *See* Ex. F (Malone Dep. Day 2) at 389.

22. Attached hereto as **Exhibit U** is a copy of the Clarkstown Police report and detective file regarding the Clarkstown police department's investigation of Plaintiff's February 28, 2019 allegations of sabotage incidents, bearing Bates numbers TOWN001619-1636. This document was marked as Exhibit 2 at Sergeant Brigando's 30(b)(6) deposition.

23. Attached hereto as **Exhibit V** are notes written by Plaintiff regarding Mr. Lillo, bearing Bates stamp MALONE_000293 which Plaintiff provided to her union president, Beth McDonald, on January 9, 2019, and which were marked as Exhibit T at Plaintiff's deposition. Plaintiff confirmed during her deposition that she wrote these notes to Ms. McDonald. Ex. F (Malone Dep. Day 2) at 379:16-381:9. Attached hereto as **Exhibit W** is a copy of the January 10, 2019 cover letter from union president Beth McDonald to Deputy Town Attorney Leslie Kahn attaching and transmitting Plaintiff's handwritten notes regarding Mr. Lillo, bearing Bates numbers TOWN002034-35.

24. Attached hereto as **Exhibit X** is an unsigned letter dated September 12, 2014 that was produced by Plaintiff bearing Bates number MALONE_001445. This document was designed Exhibit H during Plaintiff's deposition.

25. Attached hereto as **Exhibit Y** is the grievance submitted by Victoria Malone and Mike Forenza regarding promotion to MEO II, bearing Bates-stamp TOWN004911-4912.

26. Attached hereto as **Exhibit Z** is a copy of a 2016 Settlement and Release signed by Plaintiff and marked as Exhibit Z at her deposition. Ex. F (Malone Dep. Day 2) at 514:24-515:13.

27. Attached hereto as **Exhibit AA** is a copy of a police report from the Town of Clarkstown police department concerning the June 28, 2018 chainsaw incident, bearing Bates stamps TOWN002024-2025.

28. Attached hereto as **Exhibit BB** is a copy of an investigation report written by the Town's Labor Counsel bearing Bates numbers TOWN004356-4358.

29. Attached hereto as **Exhibit CC** is a transcript of the New York state court proceeding dismissing the criminal charges against Brian Lillo TOWN002026-2029.

30. Attached hereto as **Exhibit DD** are documents from the Highway Department scheduling file for March 2018, containing the daily schedule and foremen Daily Sheets for March 7, 2018 through March 21, 2018. These are excerpts from the Bates range TOWN002196-2443. *See* Ex. H (Connington Aff.) at ¶6. Notably, there were no scheduling documents for March 31, 2018 because March 31, 2018 was a Saturday.

31. Attached hereto as **Exhibit EE** are excerpts from the Highway Department scheduling and daily work files for June 1, 2018 through June 7, 2018 TOWN002618-2915.

32. Attached hereto as **Exhibit FF** are the Highway Department scheduling sheets and daily work file for June 29, 2018, bearing Bates numbers TOWN003763-3794.

33. Attached hereto as **Exhibit GG** are excerpts from the July 2018 Highway Department scheduling file, bearing Bates numbers TOWN004843-4897.

34. Attached hereto as **Exhibit HH** is a grievance submitted by Plaintiff on April 5, 2018 alleging selective removal from her crew and loss of overtime on March 13, 2018, the Decision form signed by her foreman, and a memorandum signed by Frank DiZenzo denying the grievance, bearing Bates numbers TOWN001752-1754.

35. Attached hereto as **Exhibit II** are documents regarding the assignment of truck #333 to the tree crew on June 1, 2018, including handwritten statements from Dominic Santulli, Tucker Connington, Chris McDermott, and Dennis Friscoe, bearing Bates numbers

TOWN001606-1611, and which were marked as Exhibit 11 at Mr. Connington's Deposition. Ex. G (Connington Dep.) at 216:24-217:24.

36. Attached hereto as **Exhibit JJ** is a Workplace Violence Report completed by Plaintiff on January 7, 2016, bearing Bates numbers MALONE_000168-173.

37. Attached hereto as **Exhibit KK** are handwritten notes made by Tucker Connington, bearing Bates number TOWN002063-2072, which were marked as Exhibit 5 at his deposition. *See* Ex. G (Connington Dep.) at 177:7-25.

38. Attached hereto as **Exhibit LL** are vacation requests submitted by Plaintiff, bearing Bates numbers TOWN001616-1617.

39. Attached hereto as **Exhibit MM** is a July 10, 2018 memorandum from Dominic Santulli to Frank DiZenzo attaching a handwritten complaint Plaintiff submitted to Mr. Santulli regarding the incident with truck #333, bearing Bates numbers TOWN001604-1605. *See* Ex. N. (Santulli Dep.) at 71:14-72:12.

40. Attached hereto as **Exhibit NN** is a July 10, 2018 memorandum from Dominic Santulli to Frank DiZenzo attaching a handwritten complaint that Plaintiff submitted to Mr. Santulli regarding the June 28, 2018 chainsaw incident, bearing Bates numbers MALONE_00174-176. This document was marked as Exhibit O at Plaintiff's deposition. *See* Ex. F (Malone Dep. Day 2) at 295:6-296:13.

41. Attached hereto as **Exhibit OO** is a memorandum written by the Town's Labor Counsel, Vincent Toomey, regarding the Town's investigation of Plaintiff's allegations against Brian Lillo, the memo bears Bates number TOWN004356-4358. This document was marked as Exhibit 6 at Mr. Toomey's deposition. *See* Ex. L (Toomey Dep.) at 60:15-63:6.

42. Attached hereto as **Exhibit PP** is a July 11, 2018 memorandum written by Frank DiZenzo, bearing Bates number TOWN001615, which was marked as Exhibit 2 at his deposition.

43. Attached hereto as **Exhibit RR** is a February 28, 2019 e-mail from the Town's Labor Counsel, Vincent Toomey to the Chief of Police, Raymond McCullagh, forwarding an email between Mr. Toomey and Ms. Foti, bearing Bates numbers TOWN005195-5196.

44. Attached hereto as **Exhibit SS** is a March 1, 2019 memorandum from Frank DiZenzo to Plaintiff regarding her transfer to the Town Garage, bearing Bates number TOWN001662. This document was marked as Exhibit 3 at DiZenzo's deposition.

45. Attached hereto as **Exhibit TT** is a March 8, 2019 email from Vincent Toomey to Catherine Foti, enclosing a March 8, 2019 letter from Toomey to Foti and a March 6, 2019 letter received by the Town from American Hose & Hydraulics, the third party vendor that repaired the cable on truck #327. Exhibit TT bears Bates number TOWN005417-5420.

46. Attached hereto as **Exhibit UU** is Plaintiff's notice of claim, dated September 21, 2018.

47. Attached hereto as **Exhibit VV** is Plaintiff's supplemental notice of claim, dated February 4, 2019.

48. Attached hereto as **Exhibit WW** are excerpts of the transcript of the deposition of Brian Lillo, dated October 12, 2020.

49. Attached hereto as **Exhibit XX** are excerpts of the transcript of the deposition of John Luther, dated November 17, 2020.

50. Attached as **Exhibit YY** is Plaintiff's Amended Objections and Answers to the Town Defendants' First Set of Requests for Admission, dated January 10, 2021.

51. As part of the Town Attorney's investigation of Plaintiff's January 10, 2019 complaint regarding retaliation by Brian Lillo, in January and February 2019, the Town Attorney's Office conducted interviews of Brian Lillo, and Victoria Malone. The Town also conducted interviews of witnesses identified by Plaintiff, namely: John Luther, Brian Westervelt, Chris Frank, Frank Golden, and Ray Salveggi. The audio recordings of the witness interviews were produced to Plaintiff in the course of discovery as TOWN4805-4810.

52. During discovery, Plaintiff disclosed one expert witness, a psychological expert to support her claim for emotional distress damages. Plaintiff did not disclose any experts in automobile mechanics or accident reconstruction.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of November 2021.

/s/ John M. Flannery
John M. Flannery